

**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

September 2, 2005

Proposed Regional Permit for Emergency Watershed Protection and Rehabilitation

In January 2002, United States Army Corps of Engineers, Headquarters reissued Nationwide Permits (NWP) authorizing various activities in waters of the United States, including wetlands. One of those permits was NWP 37 which authorizes discharges performed or funded by the Natural Resource Conservation Service (NRCS) under its Emergency Watershed Protection Program (EWP). Under EWP, NRCS provides technical and financial assistance to communities whose watersheds have been damaged by natural disasters such as floods, fires, windstorms, and drought. The EWP program is used to restore watershed(s) to a stable hydrologic function. The EWP Program can be used whenever a natural disaster creates sudden watershed impairment that is a threat to life and/or property.

As written, this NWP requires the NRCS or the local sponsor of a project to submit a Pre-Construction Notification (PCN) to the Corps for review and obtain a verification from the Corps before commencing construction. When such disasters occur, time is of the essence. Hence, we have consulted NRCS and all pertinent State and Federal agencies to develop a suite of conditions that would safeguard important aquatic resources and minimize environmental impacts while allowing these projects to begin more expeditiously. The enclosed proposed regional permit would incorporate the aforementioned conditions while eliminating the requirement to submit a PCN. If this proposed regional permit is issued, we would suspend NWP 37.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue this regional permit will be based on an evaluation of the probable impact including individual and cumulative impacts of the proposed regional permit on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposed regional permit must be balanced against its reasonably foreseeable detriments. All relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be

applied [Section 404(b)(1) of the Clean Water Act].

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of replacing Nationwide Permit 37 with the proposed regional permit. Any comments received will be considered by the Corps of Engineers to determine whether or not to issue the proposed regional permit. To make this decision, comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments will be fully considered and the existing Environmental Assessment modified accordingly. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed regional permit. Anyone may request a public hearing to consider this proposed regional permit by writing to the District Engineer within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Engineer will then decide if a hearing should be held.

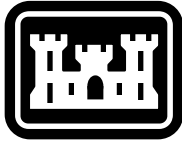
Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places would likely be affected by the proposal as specific procedures have been incorporated into the proposed regional permit. For compliance with the Coastal Zone Management Act of 1972, as amended, we must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP). For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: elirons@deq.virginia.gov.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-TS-REG, Bruce Williams), 803 Front Street, Norfolk, Virginia 23510-1096, and should be received by the close of business on October 3, 2005.

If you have any questions about this project or the permit process, please call Mr. Williams at 757.201.7418 or email him at bruce.f.williams@usace.army.mil.

FOR THE DISTRICT ENGINEER:

J. Robert Hume, III
Chief, Regulatory Branch



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

PROPOSED REGIONAL PERMIT

Effective Date:

Expiration Date:

Authorized Activity: Discharges of dredged and/or fill material into waters of the United States, including wetlands associated with activities conducted or funded by the Natural Resources Conservation Service (NRCS) under its Emergency Watershed Protection Program (7 CFR Part 624) within the Commonwealth of Virginia. Under EWP, NRCS provides technical and financial assistance to communities whose watersheds have been damaged by natural disasters such as floods, fires, windstorms, and drought. The EWP program is used to restore watershed(s) to a stable hydrologic function. The EWP Program can be used whenever a natural disaster creates sudden watershed impairment that is a threat to life and/or property.

Such activities are presently authorized by Corps Nationwide Permit NWP) 37. However, NWP 37 requires project proponents to submit a Pre-Construction Notification (PCN) to the Corps for review and a Corps verification before work can commence. When such disasters occur, time is of the essence. We have consulted NRCS and all pertinent State and Federal agencies to develop a suite of conditions that would safeguard important aquatic resources and minimize environmental impacts while allowing these projects to begin more expeditiously. The enclosed proposed regional permit would incorporate certain conditions while eliminating the requirement to submit a PCN. However, whether the construction contract is administered by NRCS or a local government, NRCS will review and approve all designs and construction specifications.

Construction, structures, work and discharges of dredged and/or fill material into waters of the United States, including wetlands associated with activities conducted or funded by the Natural Resources Conservation Service (NRCS) under its Emergency Watershed Protection Program (7 CFR Part 624) are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (Public Law 95-217). Activities authorized under this regional permit do not require further authorization from the Corps under the provisions contained in 33 CFR 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest.

This regional permit covers only those activities within the limits described in the general and special conditions contained in this announcement. This does not mean that construction outside the limits outlined in the regional permit cannot be performed; only that such construction must be approved and authorized by an individual permit. If a proposal does not meet the conditions of this regional permit, a joint permit application must be submitted to the Norfolk District for review. This application can be obtained by writing to the District at the above address or telephoning (757) 441-7652.

Work under this regional permit can proceed without further authorization provided the following special and general conditions are met:

Special Conditions:

1. NRCS and the local sponsor will employ the following construction techniques:
 - a. construction equipment will work from the bank as much as possible;
 - b. streams will be diverted to prevent equipment from working in water or work will be performed within cofferdams as needed on a case-by-case basis;
 - c. work will progress downstream to upstream;
 - d. natural stream channel design (J-hook, rock vanes, rootwads, etc.) will be used to stabilize banks in non-critical sites, if practical;
 - e. all low flow channels will be constructed/restored;
 - f. existing vegetation will be maintained as much as possible;
 - g. no channelization or trapezoidal cross-section channels will be constructed;
 - h. natural meander patterns will be maintained;
 - i. construction areas will be matched to upstream and downstream stable cross-sections, or use regional curves or other appropriate reference reaches;
 - j. time of year restrictions recommended by the Virginia Department of Game and Inland Fisheries and the U.S. Fish and Wildlife Service will be incorporated into project plans;
 - k. the minimum amount of work necessary to remove the risk created by the said storm event will be performed;
 - l. no berms will be constructed along streams;
 - m. debris will be removed from the floodplain;
 - n. non-erodible material will be used for bank stabilization and be of sufficient size to address the erosion problem; and
 - o. incorporation of the practices outlined in the 2004 Virginia Stream Restoration and Stabilization Best Management Practice Guide.
2. NRCS will complete a Damage Survey Report and prepare scaled or dimensioned plan and section view drawings including a low flow channel for each project. The DSR will include cross-sectional drawings and longitudinal profiles of existing conditions and proposed restoration conditions of areas affected by the storm event. In addition, cross-sections and longitudinal profiles of reference reaches will be provided, if applicable. The DSR will include an estimate of the damages and costs associated with each site and environmental evaluation of the impacts of the proposed EWP action. A copy of the

DSR will be provided to the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and the Virginia Department of Game and Inland Fisheries. NRCS will incorporate all recommended measures to minimize the effects of projects on the aquatic environment. If NRCS prefers not to incorporate one or more of the aforementioned agencies' recommendations, NRCS will notify the Corps who will consult with the agency or agencies who made the recommendations and determine whether or not they need to be incorporated into the project plans.

3. NRCS will comply with the underlying concepts of the Environmental Protection Agency's Section 404(b)(1) guidelines as outlined in the Record of Decision for their Programmatic Environmental Impact Statement on the EWP Program (see Volume 70, No 63 of the Federal Register, dated April 4, 2005).

4. NRCS will coordinate all projects with the Virginia Department of Game and Inland Fisheries and the U.S. Fish and Wildlife Service and incorporate all recommended measures to minimize the effect of a project federally designated critical or proposed critical habitat or a federally listed or proposed threatened or endangered species. If NRCS prefers not to incorporate one or more recommendations, it will notify the Corps who will consult with the Service as required by Section 7 of the Endangered Species Act. The Corps will evaluate the Service's recommendations and determine whether or not they need to be incorporated into the project plans.

5. NRCS will coordinate all projects with the Virginia Department of Game and Inland Fisheries and incorporate their recommendations for activities occurring in two categories of waters; Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters), as defined by the Virginia State Water Control Board Regulations, Water Quality Standards (VR-680-21-00), dated January 1, 1991, or the most recently updated publication. The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

- a). Potomac-Shenandoah
- b). James
- c). Roanoke
- d). New
- e). Tennessee and Big Sandy
- f). Rappahannock

The counties in which this notification requirement applies include: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Clarke, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Madison, Montgomery, Nelson, Pulaski, Page, Patrick, Rappahannock, Roanoke, Rockbridge, Russell, Scott, Rockingham, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. If the NRCS prefers not to incorporate one or more recommendations, it will notify the Corps who will consult with the Virginia Department of Game and Inland Fisheries. The Corps will evaluate the Department's recommendations and determine whether or not they need to be incorporated into the project plans.

6. NRCS will coordinate all projects with the Virginia Department of Historic Resources and incorporate all recommendations to minimize the effect of a project on all historic properties listed on the National Register of Historic Places and those eligible for listing. If the NRCS prefers not to incorporate one or more recommendations, it will notify the Corps who will consult with the Virginia Department of Historic Resources as required by Section 106 of the National Historic Preservation Act.

7. The following work cannot be authorized by this regional permit:

- a. general maintenance of stream banks;
- b. long-term flood and/or sediment control;
- c. operation and maintenance activities or efforts to solve watershed problems that existed before the disaster;
- d. repair, rebuild, or maintenance of public or private transportation facilities;
- e. work on land owned by and/or managed by other federal departments and agencies;
- f. repair erosion damage to beaches, dunes, and shorelines damaged by erosion as a result of wave action;
- g. landscape activities for aesthetic purposes;
- h. remove sediment or debris from reservoirs or debris dams;
- i. rebuild or protect a structure when it no longer exists; and
- j. installation of drilling wells pipelines, or irrigation equipment or purchasing portable equipment to address drought.

8. For every project conducted under this Regional Permit, the project proponent will submit a signed certification (enclosed) notifying the Corps at least five (5) days prior to beginning work.

9. The Corps will conduct an annual review with NRCS of a random number of projects. Preconstruction file and photographic documentation will be reviewed along with site evaluations of the work performed. The following agencies will be invited to participate in this review: Virginia Department of Environmental Quality, Virginia Department of Game and Inland Fisheries, Virginia Marine Resources Commission, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency. A report will be prepared with the findings of this review including as-built drawings, when available.

General Conditions:

1. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.

2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.

3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and recovery, respectively.

4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

5. If NRCS discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, they must immediately notify the Norfolk District of what they have found. The Corps will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Authorized activities must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.

8. No activity may cause more than a minimal adverse effect on navigation.

9. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

10. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.

12. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-10, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.

13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.

14. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

15. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

16. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.

17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.

19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.

20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be

materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.

21. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.

22. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on the authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee fails to comply with the terms and conditions of this permit.
- b. The information provided in support of the permit application proves to have been false, incomplete, or inaccurate (See 20 above).
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of this permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if they fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

24. This regional permit, unless further modified, suspended or revoked, will be in effect until XXXXX, 2008. Upon expiration, it may be considered for revalidation.

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding



**US Army Corps
of Engineers ®**
Norfolk District

**PRECONSTRUCTION NOTIFICATION
WITH ARMY CORPS OF ENGINEERS REGIONAL PERMIT 37**

NAME OF PERMITTEE:

PERMIT TYPE: Regional Permit

LOCALITY WHERE WORK WAS PERFORMED:

WATERWAY:

**U.S.G.S. QUADRANGLE SHEET IS ATTACHED SHOWING PROJECT
LOCATION**

This form must be faxed to the following address 5 days prior to commencing work:

**Bruce Williams
U. S. Army Corps of Engineers
Regulatory Branch
803 Front Street
Norfolk, VA 23510-1096
757.201.7678**

**Please note that you permitted activity is subject to a compliance inspection by a
U.S. Army Corps of Engineers representative. If you fail to comply with this permit
you are subject to permit suspension, modification or revocation.**

Signature of Permittee

Date